

EDWARD L. NELSON,

v.

CITY OF BONNERS FERRY,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

)
)
)
)
)
)
)
)
)
)
)

IC 2000-039843

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

FILED AUG 12 2008

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. Joseph Jarzabek represented Claimant. David R. Skinner represented Defendants. The parties submitted a stipulation of facts in lieu of hearing. Upon request of the Commission, the parties filed briefs. The case came under advisement on June 4, 2008. It is now ready for decision.

The issues to be resolved according to the notice of hearing are:

- ## RECOMMENDATION - 1

- b) Permanent partial impairment (PPI);
- c) Disability in excess of impairment;
- d) Retraining;
- e) Medical care; and
- f) Attorney fees.

CONTENTIONS OF THE PARTIES

Claimant contends his Complaint should be deemed timely filed within the statutes of limitation. The mere chance occurrence that Defendants were not paying income benefits on or across the date of the fourth anniversary of the accident should not preclude him from filing a Complaint within one year from the date income payments finally stopped.

Defendants contend the rule announced in Salas v. J.R. Simplot Co., 138 Idaho 212, 61 P.3d 569 (2002), is dispositive.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Stipulated facts submitted by the parties; and
2. Joint Exhibits 1 – 2.

After considering the record, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

STIPULATED FINDINGS OF FACT

(The following is a verbatim recitation of the stipulated facts submitted by the parties.)

1. The accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed;
2. The employer/employee relationship existed;
3. The parties were subject to the provisions of the Idaho Workers' Compensation Act;

RECOMMENDATION - 2

4. The condition for which benefits are claimed was caused entirely by an accident arising out of an[d] in the course of Claimant's employment;

5. The notice of the accident causing the injury was given to the [E]mployer as soon as possible but not later than 60 days after said accident;

6. The [E]mployer was insured as required by the Idaho Workers Compensation Act;

7. Claimant had injuries while employed with the [D]efendant [E]mployer, the records of the Industrial Commission relating to these injuries for a period of ten years preceding the date of filing the application are set forth in the documentation provided the parties by the Industrial Commission. This documentation is labeled "Exhibit 1", attached hereto and by this reference incorporated herein as if set forth in full;

8. State Insurance Fund has provided Claimant's counsel an itemization of benefits it claims were paid for Claim No. 2000019897. A copy of the "Breakdown of Benefits" is labeled "Exhibit 2" attached hereto and by this reference incorporated herein as if set forth in full. As of November 13, 2006 [D]efendants have paid the following:

Medical Expense	\$161,840.46
TTD	24,550.32
PPI	<u>29,728.23</u>
Total Paid through 11/06/06	\$216,119.01

9. Claimant was injured on October 13, 2000. Claimant received income benefits (TTD/TPD) and/or PPI for the following dates:

08/15/2001 – 09/30/2001	TTD/TPD
05/01/2002 – 12/31/2002	PPI
02/02/2003 – 10/03/2003	PPI
10/08/2003 – 10/20/2003	TTD/TPD
12/02/2004 – 12/31/2004	PPI

RECOMMENDATION - 3

01/01/2005 – 04/30/2005 PPI
04/11/2005 – 12/31/2005 TTD/TPD
01/01/2006 – 03/13/2006 TTD/TPD
02/01/2006 – 06/05/2006 PPI

Claimant's earliest medical benefit was for a date of service 12/06/2000 (Richard Neher, M.D.), the latest medical benefit was for a date of service 05/27/2006 (North Idaho Neurosurgery). Medical benefits were paid continuously; payment is noted to have been made to Daryl Reoch, D.C., on November 11, 2004 for treatment provided to 10/05/2004 – 10/22/2004;

10. Claimant was injured on October 13, 2000. On October 13, 2004, the fourth anniversary of the [C]laimant's industrial injury, the [D]efendants were not paying any income benefits. Claimant's [C]omplaint was filed on September 16, 2006.

11. The State Insurance Fund had no communication with the Claimant in regard to the Statute of Limitations prior to the filing of the Complaint.

DISCUSSION AND FURTHER FINDINGS OF FACT

12. The foregoing stipulated findings of fact are accepted and adopted by the Commission.

13. **Statute of Limitations.** The so-called "anniversary rule" was applied by the Idaho Supreme Court in Walters v. Blincoe's Magic Valley Packing Co., 117 Idaho 239, 787 P.2d 225 (1989). It was codified in 1991 as Idaho Code § 72-706(3) which states:

If income benefits have been paid and discontinued more than four (4) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease, the claimant shall have one (1) year from the date of the last payment of income benefits within which to make and file with the commission an application requesting a hearing for additional income benefits.

14. In Salas v. J.R. Simplot Co., 138 Idaho 212, 61 P.3d 569 (2002), the Court held that if no payments for income benefits were being made at the fourth anniversary of

the accident, the five-year statute of limitations would bar a complaint filed later, even if income benefits began again to be paid after the fourth anniversary. Compensation includes both medical benefits and income benefits. Idaho Code § 72-102(7). But income benefits are not medical benefits and vice-versa.

15. Here, no income benefits were being paid from October 21, 2003 through December 1, 2004. These dates span the fourth anniversary of the accident. Medical benefits for care provided which spanned the fourth anniversary of the accident were paid. The fact that medical compensation was paid is irrelevant to the statute. Therefore, under the statute, Claimant's Complaint must have been filed on or before October 13, 2005. It was not filed until September 16, 2006.

16. Claimant's argument that a defendant should not be allowed to manipulate payment dates to shorten a claimant's time for filing a complaint is well taken. Such an action would likely not be considered a basis for invoking the fourth-year anniversary rule. Moreover, such an action would likely be deemed unreasonable and a basis for imposition of attorney fees under Idaho Code § 72-804. However, here there is no evidence that the discontinuation of benefits was made for such a manipulative purpose. Rather, it appears the payment experience in this case reflects normal and proper handling of payment of income benefits. A claimant's ignorance of his responsibilities under the Idaho Workers' Compensation Law is not a basis for ignoring the plainly worded intention of the Legislature.

17. The statute of limitation does not apply to medical benefits. The stipulated facts do not suggest a dispute as to receipt of medical benefits. No justiciable controversy over payment of medical benefits exists.

RECOMMENDATION - 5

CONCLUSIONS OF LAW

1. Claimant's Complaint for income benefits was not timely filed.
2. Issues of medical care and attorney fees are moot or do not present a justiciable controversy.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 6TH day of August, 2008.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EDWARD L. NELSON,)	
)	
Claimant,)	IC 2000-039843
v.)	
)	
CITY OF BONNERS FERRY,)	ORDER
)	
Employer,)	
and)	FILED AUG 12 2008
)	
IDAHO STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant's Complaint for income benefits was not timely filed.
2. Issues of medical care and attorney fees are moot or do

not present a justiciable controversy.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 12th day of AUGUST, 2008.

INDUSTRIAL COMMISSION

/S/ _____

James F. Kile, Chairman

Participated but did not sign.

R. D. Maynard, Commissioner

/S/ _____

Thomas E. Limbaugh, Commissioner

ATTEST:

/S/ _____

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 12TH day of AUGUST, 2008, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Joseph Jarzabek
P.O. Box 1049
Sandpoint, ID 83864

David R. Skinner
6098 Tonkin Drive
Boise, ID 83704

db

/S/ _____

ORDER - 2